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held that examination may be compelled, it rests in the discretion of the trial court and will not be reviewed unless grossly erroneous.

EVIDENCE—PRIVILEGED COMMUNICATION—COUNTY ATTORNEY.—In an action for malicious prosecution, the testimony of the county attorney, as to the statements which caused the indictment of plaintiff, made to him by defendant, was held inadmissible, because a privileged communication. *Gabriel v. McMullin* (1905), — Ia. —, 103 N. W. Rep. 355.

Whether in such a case the relation of attorney and client exists, the cases are in conflict. The Code of Iowa (§ 3643) provides that "no practicing attorney * * * shall be allowed in giving testimony to disclose any confidential communication properly entrusted to him in his professional capacity." It will be seen that the above decision was justified under the statute, even though the relation of attorney and client did not exist. This view was taken by the same court in *State v. Houseworth*, 91 Iowa 740, where the statute was held broad enough to cover such a case. Upon practically the same state of facts, it was held that the relation of attorney and client did exist, that the prosecuting attorney was defendant's attorney for the time being, and that the communication was privileged. *Oliver v. Pate*, 43 Ind. 132. In *Vogel v. Gruaz*, 110 U. S. 311, the same view was taken, the court saying that the person consulted the prosecuting attorney, just as he would consult any other attorney, to ascertain if the facts stated were sufficient to justify prosecution. The fact that nothing was paid for the advice made no difference. This decision was also placed on the ground of an informer's privilege. On the other hand, *Cole v. Andrews*, 74 Minn. 93 held that in such a case the relation of attorney and client did not exist, that the communication was not privileged, and that the statute providing that "a public officer cannot be examined as to communications," etc., did not apply. In *Granger v. Warrington*, 8 Ill. 299, such a communication was declared not privileged, as the relation of attorney and client did not exist, and that no considerations of public policy so required. In some cases such communications are held privileged on the principle of informers and government officers. This reasoning is indicated and partially relied on in *Oliver v. Pate*, *Vogel v. Gruaz*, *supra*. The distinction should be noted that in such a case the privilege is that of the government, not of the person making the statement.

EXECUTION—PREMATURE—COLLATERAL ATTACK.—Execution was issued by consent of defendant within twenty-four hours after entry of judgment, on it defendant was arrested and imprisoned, and in an action by the creditor against the surety on the recognizance of the defendant as a poor debtor, *Held*, that the surety might defend the action by showing that the execution was prematurely issued, and in contravention of the statute forbidding execution to issue within twenty-four hours after entry of judgment; and that while the court might, the clerk could not, issue such execution on consent of defendant. *Washington National Bank v. Williams* (1905), 188 Mass. 103, 74 N. E. 470.